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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,156	03/17/2004	Mark A. Buchalter	441800	3935

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SEYFARTH SHAW LLP
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CHICAGO, IL 60603-5803

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/802,156

Applicant(s)

BUCHALTER ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
4a) Of the above claim(s) 8-17 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 3-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3-5-07.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

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Claim 2 has been canceled. Claims 1 and 3-17 are pending.

Claims 8-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on February 6, 2007.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Marisco.

Marisco discloses a trash receptacle capable of holding a bag, the container comprises a sidewall defining a bag receiving area, having an upper rim, a surface projects from the sidewall horizontally aligned with the upper rim, then into a grooved section 14 and finally horizontally outwardly again aligned with the upper rim, the grooved section 14 defines a locking portion defining a recess, a locking member (retainer 16) having a bag receiving notch (concave portion 38) is carried by the locking portion when inserted therein as shown in Fig. 2B and 3 in a locking position, a release position is shown in Fig. 2A. Re claim 7, the widened upper half of retainer 16 provides a handle tab.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergaila.

Bergaila discloses a bag holder comprising a sidewall (the inner surface of bag support ring 12) having an upper rim and a surface which projects from the sidewall horizontally aligned with the upper rim (48L), then into a grooved section 14 and finally horizontally outwardly again aligned with the upper rim (48R), the grooved section 14 defines a locking portion defining a

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recess, a locking member (bag locking ring 18) having a bag retaining notch (groove 36). Re claim 3, pivot structure supports the locking member.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce-Middaugh in view of Marisco and Bergalia.

Joyce-Middaugh discloses a bag holder formed by the combination of a trash receptacle and a divider (20), both the receptacle and the divider have the sidewall and the upper rim, the divider has a surface projecting from the sidewall, the surface includes a circumferential portion as well as cross members which extend towards the center, this surface has a locking portion defining a recess (concave portion 29). a locking member (fastener arm 35) is hinged within the recess. Joyce-Middaugh discloses the invention except for the bag-retaining notch. Marisco and Bergaila both teach bag-retaining notches. It would have been obvious to add the bag-retaining notch to provide an area to collect or gather excess bag material to provide proper operation of the locking member and to maintain an aesthetically pleasing appearance without excessive bag spill-out from the bag locking portion.

Re claims 4-6, Joyce-Middaugh discloses an integrally molded shaft extending across the recess but fails to disclose a second notch to receive a pivot shaft. Bergaila teaches a pivot with a separately rotated pivot shaft separated from a second notch for receiving the pivot shaft. It would have been obvious to modify the Joyce-Middaugh shaft construction to be a separate shaft

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and a pivot shaft receiving notch to provide for separation to allow easy cleaning or replacement of a damaged locking member without the need to remove or replace the pivot shaft.

Re claim 7, flange 45 of Joyce-Middaugh defines a handle tab.

Applicant's arguments with respect to claims 1 and 3-7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
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sjc